

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8752 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PARSHOTTAMDAS RAMCHAND

Versus

COLLECTOR OF JUNAGADH

Appearance:

MR JITENDRA M PATEL for Petitioners
Mr J G Sheth, AGP for Respondent No. 1, 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 11/08/2000

CAV JUDGEMENT

This petition under Article 226 of the Constitution of India has been filed by the petitioners abovenamed to challenge the orders of Revenue Authorities setting aside certain entries from revenue records of

rights and also directing confiscation of the land s.no.114/5 to the State Government.

2. The facts may be briefly stated as follows.

Deceased petitioner no.1 and petitioner no.2 purchased the disputed land s.nos.114/1,114/2 and 114/3 from one Mamad Kana under sale deed dated 8.2.1980. They are in all admeasuring at A-10-19 Gunthas and are situated at village Virpur. This can be gathered from the copy of the sale deed at annexure 'B' at page 16. An entry was posted at sr.no.610 on 4.3.1980 and was certified by the Mamlatdar on 14.4.1980. It is at page 24. Thereafter these purchasers requested for consolidation and it was permitted and agricultural lands s.nos. 114/1, 114/2 and 114/3 were given new s.no.114/3 for the entire area of A-10-19 Gunthas in terms of entry no.643 dated 16.9.1980 at page 24. This entry was posted pursuant to the order dated 10.6.1980, modifying the earlier entry no. 618 dated 4.3.1980. Thereafter, the two petitioners submitted that the deceased petitioner Purushottam had given up his right in the land s.no.114/3 and hence entry no.653 at annexure 'C' at page 22 was posted accordingly on 15.7.1981 which was certified on 6.10.1981. The petitioner (2) was thus shown to be sole owner of this land s.no.114/1. Then, he submitted that the land s.no.114/1 be mutated in the name of his wife Miraben-petitioner no.3. This was done in two parts under two entries at s.no.654 and 701 dated 15.7.1981 and 12.5.1984 respectively which were certified on 6.10.1981 and 3.9.1984 respectively. This means that the whole s.no.114/1 now stands in the name of petitioner no.3.

3. The Asstt.Collector served the petitioners with notice dated 11.7.1989 asking them to show cause as to why those entries be not cancelled. The reason given was that the aforesaid entries were posted without registered documents and without payment of stamp duty. The petitioner no.1 and 2 submitted affidavits in their defence. The copies of which are placed at Annexure E-1 and E-2. There the defence was that petitioner no.1 is the uncle of petitioner no.2. That, they belong to a joint Hindu Family and in Pakistan also they owned and possessed agricultural lands before they came to be migrated to India. That, thereafter they partitioned the property and the mutation entries are the outcome of such a partition.

4. The Asstt.Collector did not agree and in suo motu exercise of revisional powers, cancelled the entries at survey nos. 618,643,653,654 and 701 by order dated 16.5.1990 at Annexure 'F' at page 34.

5. The petitioners preferred Revision Application being Land-4-Revision No.20/90 before the Collector, who dismissed the said Revision Application and further directed that since there is violation of section 54 of the Saurashtra Gharkhed Ordinance, the entire land survey no.114/5 (correct no. is 114/1). be confiscated to the State Government.

6. The petitioners have preferred this Special Civil Application to challenge the said two orders stating that the said authorities have overlooked the legal and factual aspects and that the suo motu powers of revision have been exercised after long lapse of time. The petitioners therefore, pray that this petition be allowed and the orders of the abovesaid authorities be quashed and set aside.

7. I have heard M/s.J M Patel and K G Sheth, the learned Advocate for the petitioners and learned AGP respectively and have perused the papers.

8. The aforesaid entries themselves speak that they were posted and certified between 1981 and 1984. This can be gathered from entries at page 22,23,24. There is absolutely no dispute about this factual aspect. The Asstt.Collector has commenced the suo motu proceedings in exercise of revisional powers in July, 1990. This is evident from the copy of the notice at annexure 'D' at page 26. This fact and the documents are not at dispute. This clearly shows that the revisional power is sought to be exercised about six years of finalisation of the proceedings. In other words, the revisional powers have been exercised after nearly 6 years.

9. As regards the fact as to whether a particular officer can exercise revisional powers, the case law is very clear and it says that the said powers are required to be exercised within a reasonable period only and not thereafter. This can be gathered from the famous case of State of Gujarat v. Patel Raghav Natha, reported in AIR 1969 SC 1297. This decision has been followed time and again by various courts. Decisions in Bhagvanji Bavanji v.

State of Gujarat (XII GLR 156) and Evergreen Apartment Cooperative Housing Society Ltd. v. Special Secretary (Appeals) (1991(1)GLH 155) are the examples showing that the principle laid down in the case of State of Gujarat v. Patel Raghav Natha (supra) has been consistently followed. All these decisions clearly say in unequivocal terms that suo motu revisional powers must be exercised

within reasonable period when no time limit has been fixed for the purpose. Here the suo motu powers have been exercised after inordinate delay and lapse of over six years which cannot be sustained.

10. The learned AGP has tried to defend the case arguing that the Mamlatdar reported late and hence there was delay. This is no ground. The Mamlatdar himself has certified the entries between 1980-1984. He was, therefore, aware of the factual aspects. Therefore, simply because the Mamlatdar submitted report late, it would not save the orders impugned in this petition. Moreover, there is nothing on record to show as to when the Mamlatdar reported the matter to the Asstt. Collector and what was the reason for the delay in submission of his report. Therefore also, the orders in question cannot be sustained in absence of any explanation for delayed proceedings.

11. The Collector's order suffers from one additional aspect. He has not only disallowed the Revision Application of the petitioners and confirmed the order of the Asstt. Collector but he went ahead to direct confiscation of the lands in question for which no notice was given to the petitioners. In *Union of India v. Madhumilan Syntex*, reported in (1988) 3 SCC 348, it has been observed that when the show cause notice merely asked the assessee to show cause against circulation or determination of amount of short levy and not against the alteration in the classification tests on the basis of which short levy alleged, then in that case the notice would be bad and liable to be quashed.

12. It is very clear that the notice issued to the petitioners at Annexure 'D' related to the entries as aforesaid on the ground that the transfers have been effected without documents duly stamped, putting the State to the loss of stamp duty. The Collector, on the other hand also held that the transactions were contrary to the provisions of section 54 of the Saurashtra Gharkhed Ordinance 1949 and consequently, directed confiscation of the land survey no.114/1. There was no notice to the petitioners to the above effect and the notice at Annexure 'D' referred to hereinabove, does not contain the aforesaid set of factual and legal aspects. The petitioners were under a notice at annexure 'D' only to show cause as to why the aforesaid entries be not cancelled. There was no notice to show cause as to why the land survey no.114/1 should not be confiscated to state. At least there is no notice on the records of this petition containing the said factual allegations.

There is no affidavit in reply filed by the respondents clarifying the aforesaid petition. There is no such argument advanced on behalf of the State by the learned AGP on this subject. In the facts and circumstances of the case, the land survey no. 114/1 is ordered to be confiscated to the State on application of section 54 of the Saurashtra Gharkhed Ordinance, 1949 without any notice to the petitioners on the subject. Therefore, this order would be bad in law on the ground that it has been passed without giving a reasonable opportunity to the petitioners of being heard.

13. The petitioners have filed affidavits showing that they were agriculturists in Pakistan and were members of a Joint Hindu Family. Such affidavits appear to have been filed before the Collector. However, it is not clear if the Collector had issued second/additional/supplementary notice on this point to the petitioners. But the fact remains that there is no material before me on the subject.

14. The impugned notice and the actions of the respondents pursuant to the notice and the orders impugned in this petition are all illegal and not sustainable on account of inordinate and unexplained delay of about six years.

15. In the premise, the petition must be allowed and the impugned notice be held illegal. Consequently the orders impugned in the petition have to be quashed and set aside.

16. This petition is accordingly allowed. The orders of the Asstt. Collector, the Collector and the State Government dated 16.5.1990, 23.11.1990 and 10.12.1990 respectively placed at Annexures F, G and H respectively are ordered to be quashed and set aside. Rule is made absolute. There shall be no order as to costs.

[D P Buch, J.]
msp.